CRP 41/2007
BEFORE
HON'BLE MR. JUSTICE H.N. SARMA
C.R.P. No. 41/2007

BEFORE
THE HON'BLE MR. JUSTICE H.N. SARMA

14.2. 2007

This revision petition is filed challenging the legality and validity of the order passed in Misc. Appeal No. 12/2006 by the learned Civil Judge (Senior Division) Lakhimpur.

By the impugned order the learned first appellate court allowing the app eal of the defendant/respondent set aside the ad interim order of injunction pas sed by the by the learned Civil Judge (Junior Division) in MC case No. 10/2006 , dated 28-9-2006, passed a restraint order against the defendant/respondent.

I have heard Mr. D. Majumdar, learned counsel for the petitioner and als o A.J. Mahanta, learned counsel for the defendant/respondent who entered appeara nce by filing a caveat.

The plaintiff instituted the aforesaid Title Suit praying for right, t itle and interest over the suit land measuring 1 katha and for recovery of khash possession thereof by evicting the defendant. Along with the suit the plaintiff also filed an application for temporary injunction which was registered as Misc . (J) Case No. 10/2006. The defendant filed objection opposing the prayer for te mporary injunction. The learned trial court after hearing the parties granted ad interim order of injunction vide order dated 18-9-2006 and dispose of the Misc. Case which was carried into the aforesaid Misc. Appeal No. 12/2006. While cons idering the appeal, the learned first appellate court came to a finding that al though the plaintiff has a prima facie case to go for trial but the other two i ngredients for granting ad-interim injunction viz. balance of convenience and ir reparable loss are against the plaintiff and accordingly the learned first appel late court rightly set aside the impugned order of injunction granted by the lea rned trial court.

In the matter of granting ad-interim injunction the basic principles tha t require to be borne in mind are :-

1. Whether there is a prima facie case to go for trial,
2. whether the balance of convenience lies in favour of the plaintiff/petit ioner and whether granting ad-interim injunction to the plaintiff would cause ir reparable loss to the defendant/respondent.
3. That apart in certain cases element of public interest is also required to taken note of.

Admittedly the suit of the plaintiff is for recovery of khash possession of the suit land and restraining the appellant from making further construction till the disposal of the suit. It also emerges from the record that the plainti ff started construction in the year 2004 itself over the suit land and the suit land had been later on demarcated by the Circle Officer Dhakuakhana on 5-6-2006 in presence of the plaintiff/petitioner and other neighbour. The defendant/resp ondent in his objection petition has categorically stated that after execution o f the sale deed on 23-11-2002 the plaintiff delivered the possession of the 4 ka thas of land sold thereby to the defendant and after purchasing the same the def endant started construction of RCC building in the year 2004. It is also stated that on 5-6-2006 the boundary of 4 kathas of land purchased by the defendant w as demarcated by the Lat Mandal in presence of the petitioners and other neighbo ur. From all these statements and also from the averments made in the injunction petition it is seen that the defendant/petitioner is in possession of the same.

The learned appellate court on consideration of the aforesaid facts came to a conclusion that there is no balance of convenience in favour of the plaint iff/petitioner. However whether the plaintiff had constructed the aforesaid buil

ding in his land or whether the allegation of encroachment of the plaintiff's la nd is correct or not would be a matter of decision in the trial of the suit and consequential order would be passed on the basis of findings to be arrived at in the suit. I do not find that the learned court has committed any jurisdictiona l error in passing the impugned order.
In that view of the matter, I do not find any merit in this application and the same stands dismissed.

JUDGE

arupMisc. Case No. 518/2007
In
C.R.P. No. 41/2007

BEFORE
THE HON'BLE MR. JUSTICE H.N. SARMA

14.2. 2007

In view of the order passed in C.R.P. No. 41 /2007, dated 14.2.07, the connected Misc. Case also stands disposed of.

JUDGE

arup